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No. 86-589

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

CHARLES EDWARD KRUPPS, HAROLD O. EDGINGTON, HOWARD D. MATHEWS, SR., VINCENT ROSE, LATTIE JO DARBY ROSE, ROSIE HENLEY, AND JOHN ELLIS HENLEY,
Petitioners.

v.

THE STATE OF TEXAS,
Respondent.

On Petition For Writ of Certiorari To The Texas Court Of Criminal Appeals

RESPONDENT'S BRIEF IN OPPOSITION

STATE OF TEXAS

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QUESTIONS PRESENTED

I. Whether a trial judge may constitutionally imprison a defendant and his supporters who, because of sincere religious beliefs, peacefully decline to stand when the judge enters or leaves the courtroom after having been offered an opportunity to enter the courtroom after court convenes but who otherwise participates in the trial proceedings without obstruction.

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RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

NOW COMES the State of Texas, Respondent herein, by and through its attorney, Tom Maness, Criminal District Attorney for Jefferson County, Texas by Richard F. Baker, Assistant Criminal District Attorney and in response to the petition for writ of certiorari submits this Brief in Opposition.

OPINION BELOW

Petitioner correctly states the opinion below.

JURISDICTION

Petitioner correctly seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES

Petitioner's attack on the exercise of Summary Contempt Power is based upon the 1st and 14th Amendments to the United States Constitution. Texas Government Code §21.001 and 21.002(a) (b)

STATEMENT OF THE CASE

Respondent is in substantial agreement with Petitioner's Statement of the Case.

ARGUMENT

The Texas Government Code provides:

§ 21.001. Inherent Power And Duty of Courts

(a) A court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction.

(b) A court shall require that proceedings be conducted with dignity and in an orderly and expeditious manner and control the proceedings so that justice is done.

§ 21.002. Contempt of Court

(a) A court may punish for contempt.

(b) The punishment for contempt of a court other than a justice court or municipal court is a fine of not more than $500 or confinement in the county jail for not more than six months, or both such a fine and confinement in jail.

Judge Donald Floyd explained before court that failure to rise would result in a finding of contempt and offered an opportunity for respondent to avoid such a finding of contempt by entering the courtroom after court convened. This arrangement would not have been against any one's religious beliefs nor would it have created any problems for the conduct of the trial. Respondents, through Charles Krupps, declined. When they failed to rise, Judge Floyd held them in contempt.

At a later date during the trial of Mr. Krupps for driving an automobile without proof of liability insurance, one of 3,000 cases Judge Floyd handled in 1985, the Judge offered all of the petitioners the opportunity to enter the courtroom with the Judge and leave before the Judge left the courtroom. All petitioners accepted that opportunity.

The statutes of the State of Texas do not define contempt of court, and courts are relegated to the common law. In *Ex Parte Norton*, 191 S.W.2d 713, 714 (1946), the Texas Supreme Court said:

> Generally speaking, he whose conduct tends to bring the authority and the administration of the law into disrespect or disregard, interferes with or prejudices parties or their witnesses during a litigation, or otherwise tends to impede, embarrass, or obstruct the court in the discharge of its duties is guilty of contempt.

The same court said in *Ex Parte Gordon*, 484 S.W.2d 686, 688 (1979) "Direct contempt occurs within the presence of the court; for example, an affront to the dignity of the court or disruptive conduct in the courtroom."

The law is unclear at this time with respect to whether a party may refuse to stand in a court of law without being charged with contempt of court. The circuit courts that have

examined this question have taken opposing views on the subject. It is well settled that conduct or inaction undertaken because of sincerely held religious beliefs is not absolutely protected by the free exercise clause. It may be regulated or prohibited by the state if there is a compelling public interest. The court must balance the burden on the individual's religious interest against the substantiality of the state's interest. It must also examine whether the state could achieve its objective through a less restrictive alternative. *Quaring u Peterson,* 728 F.2d 1121 (8th Cir. 1984).

Based on the above analysis the Fourth Circuit has adopted the view that a party's mere refusal to stand in the courtroom does not amount to a violation of the contempt statute. The Fourth Circuit believes that the party's refusal must amount to a "material obstruction" in judicial administration to trigger the punishment of contempt. *United States u Snider,* 502 F.2d 645 (4th Cir. 1974).

On the other hand, the Seventh Circuit strongly opposes the view adopted by the Fourth Circuit. It believes that a party's refusal to stand in the courtroom is a violation of the contempt statute, and the First Amendment does not excuse performance under the statute. *In Re Chase,* 468 F.2d 128 (7th Cir. 1972).

One court has dealt with the issue by removing the party from the courtroom, thereby accommodating both religious belief and protecting the state's interest in respecting the court system. *United States u Malone,* 412 F.2d 848 (7th Cir. 1969).

To the best knowledge of Respondent, every Court of record in the State of Texas, and every Court of the United States, including the Supreme Court of the United States admonishes all persons to rise upon the entry and exit of the Court. If the refusal to so rise, as contrasted with a mere failure to do so, does not constitute "an affront to the dignity of the Court" and is not contemptuous, then all Courts should remove from the lexicon of baliff the admonition "Everyone rise," for no order of any Court should be made unless it is to be obeyed.

The question appears to be: "Does the free exercise of religion clause allow for a confrontation with the Courts?" I think not.

CONCLUSION

For the above reasons, Respondent respectfully prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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